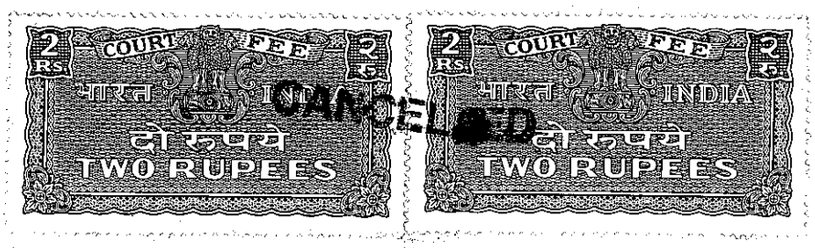

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Single Bench

Second Appeal No. 26 Of 2006

APPELLANTS/ PLAINTIFFS : 1. Banvali S/o Durgu, Age about 50 years
: 2. Adhin S/o Durgu, Age about 45 years
: 3. Rajnath S/o Durgu, Age about 38 years.
: 4. Dead Somnath S/o Durgu ke (deleted) Vaidhya Pratinidhi
4. A) Bhukhan S/o Somnath Sahu Age 25 years,
All are cultivators and all Resident of Village Gangpur, Tahsil Kawardha , Distt. Rajnandgaon (presently Kabirdham district (CG).

P.R. No. 137/06
Presented by Shri Laxman Baghmare
dated 7/12/06

VERSUS

RESPONDENTS 1. Mujnu S/o Raisingh, Age 38 year.
2. Kejau S/o Boda, Age 35year.
3. Dashru S/o Boda, age 30year.
4. Duklha S/o Boda , age 25 year.
All are cultivators and all Resident of Village Gangpur, Tahsil Kawardha , Distt. Rajnandgaon (presently Kabirdham district (CG).
5. Late. Najaru S/o Pusau, ke Vaidhya Pratinidhi
5. 1) Bipatram S/o Najaru , age 45 year, Resident Dargaon Tahsil Kawardha
5. 2) Bipatibai W/o Ishwari, age 40 year, Resident Gavahabata, Tahsil Kawardha
6. Dead Ganga Bai W/o Santram ke Vaidh Vaarisan-
6. 1) Bihari S/o Ranga Sahu age 36 year, Resident Birkona Tahsil Kawardh .
6. 2) Khelan S/o Ranga Sahu, age 40 year, Resident Birkona Tahsil Kawardha
6. 3) Lala S/o Ranga Sahu, age 38 Resident Indori, Tahsil Kawardha,

6.4/ Adhanu Sahu S/o Samaru Sahu, age 35 year, Resident Indori Tahsil Kawardha

6.5/ Parsram S/o Khelau Sahu, age 63 year,Resident Sonda , Tahsil Barela, Distt. Durg.

6.6/ Panchram S/o Parsram age 40 year,Resident Sonda , Tahsil Barela, Distt. Durg.

6.7/ Chetram S/o Parsram age 38 year, Resident Sonda , Tahsil Barela, Distt. Durg.

6.8/ Kartikram S/o Parsram age 36 year, Resident Sonda , Tahsil Barela, Distt. Durg.

6.9/ Gopal Ram S/o Parasram age 34 year, Resident Sonda , Tahsil Barela, Distt. Durg

6.10/ Jagatram S/o Parasram age 32 year, Resident Sonda , Tahsil Barela, Distt. Durg.

6.11/ Kumaribai Wd/o Loknath age 56 year, Resident Bhedli Tahsil Kawardha,

6.12/ Kunti Bai W/o Premkumar age 23 year, Resident Kutkipara Tahsil Kawardha .

6.13/ Sonmatbai W/o Hemrai age 56 year, Resident Kutkipara Tahsil Kawardha .

6.14/ Khorbahra S/o Baburam age 35 year,Resident Parasvara (Pandatarai)Tahsil Kawardha .

6.15/ Chandrika S/o Khorbahra age 35 year, Resident Chardongari Tahsil Kawardha.

6.16/ Chameli W/o Shriram age 38 year , Resident Pawani , Tahsil Mungeli.

6.17/ Dhukhiyabai W/o Pakhanram age 52 year, Resident Gangpur Tahsil Kawardha .

6.18/ Vishram S/o Sahoran age 53 year, Resident Gram Sonpuri Tahsil Kawardha.

6.19/ Gokul S/o Vishram age 22 year, Resident Gram Sonpuri, Tahsl Kawardha.

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6·20/ Devnadh S/o Santram age 40 year,
Resident Sonda Tahsil Barela,
Distt. Durg.

6·21/ Baijuram S/o Santram age 34 year,
Resident Sonda Tahsil Barela,
Distt. Durg.

6·22/ Fagni Bai W/o Bhukhu Sahu age 60
year, Resident Sonda Tahsil Barela,
Distt. Durg.

7. STATE Of.C.G.
Through Collector Kabirdham C.G. 17.01.06

MEMORANDUM OF SECOND APPEAL UNDER

SECTION 100 OF CODE OF CIVIL PROCEDURE 1908

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... S.A. 26 ..... सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

29.8.2006

Shri Awadh Tripathi, counsel for the appellants.

Arguments on admission heard.

Order dictated as follows:

ORAL ORDER
(29.8.2006)

This is the plaintiffs' Second Appeal, filed under Section 100 of the Code of Civil Procedure. The plaintiffs lost in both the Courts. This appeal arises out of judgment and decree dated 27.10.2005, passed by the Additional District Judge (FTC), Kabeerdham in Civil Appeal No.8-A/2004, arising out of judgment and decree dated 21.12.1979, passed in Civil Suit No. 9-A/78 by the Additional Civil Judge- Class-II, Rajnandgaon, Camp-Kawardha.

The brief facts are that the plaintiffs filed a suit for declaration, partition and separate possession in respect of the suit land, described in Schedule-A of the plaint. The plaint allegations are that the suit land, including many other lands was the joint property among the 3 brothers namely- Pusau, Bhukhau and Durgau. The plaintiffs are the successors of branch of Durgau, whereas, the defendants are the successors of branch of Pusau and Bhukhau. The plaintiffs claimed that since there was no partition of this land in the family, they are the owners of the said land to the extent of 1/3 share in it. This contention of the plaintiffs was opposed by defendants No.1 to 5, who are the successors of Pusau. They contented that in fact, there was a partition in the family 48 years back and all the 3 brothers namely-Pusau, Bhukhau and Durgau were

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आदेश पत्रक

मामला क्रमांक S.A. 26 ..... **सन्** 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

separated from each other. They also contented that in the said partition, the suit land was allotted in the share of Pusau, who remained in exclusive possession of the same till his life-time and after his death, the same is being possessed by his successors i.e. defendants No. 1 to 5.

Learned trial Court framed various issues in this case and after recording evidence of the parties, dismissed the suit of the plaintiffs, holding that there was a partition in between 3 brothers namely-Pusau, Bhukhau and Durgau and in the said partition, the suit land was allotted in the share of Pusau and thereafter, the same was succeeded by his successors i.e defendants No. 1 to 5.

Against the aforesaid judgment and decree, passed by the trial Court, the plaintiffs filed a First Appeal before the lower appellate court. The lower appellate court also took the similar view, confirming the finding of partition in the family of 3 brothers and also confirming the finding that in consequence of the partition, the suit land was allotted to the share of Pusau, whose successors (defendants No.1 to 5), are holding the possession thereof.

Learned counsel for the appellants submits that the finding in relation to partition is perverse. He also submits that the Courts below erred in law in holding that there was a partition in the family and the suit land was allotted to the share of one of the brothers in the said partition.

I have heard learned counsel for the appellants at length and have also gone through the records of the Courts below.

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आदेश पत्रक

मामला क्रमांक S.A. 26 **सन्** 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	For the purpose of finding of partition, the Courts below have relied on the oral evidence of the defendants, which shows that there was a partition in the family. They have also relied on the documentary evidence i.e. revenue records, pertaining to the suit land, which does not stand on the names of the plaintiffs and they stand on the names of successors of Pusau. The Courts below have also referred to the facts in regard to *Chakbandi* proceedings in relation to this land, in which, this land was recorded on the solitary name of one of the grand-sons of Pusau namely- Mujnu(defendant No.1) and on the basis of this evidence, they have come to the conclusion that there was a partition in the family and in the said partition, this land was allotted to the share of Pusau and it was ultimately succeeded by his heirs, who are defendants No.1 to 5. Since the finding in relation to factum of partition is a finding of fact and the same has been concurrently recorded by the 2 Courts below and there appears to be no perversity in this finding recorded by the said Courts, I am of the opinion that this appeal does not involve any substantial question of law for consideration under Section 100 of the Code of Civil Procedure. The appeal has no merit. The same is dismissed at the motion stage itself. **Sd/-** **Sunil Kumar Sinha** **Judge**	

sunita

(पीछे देखिये)